

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LATONIA CRAWFORD,)	1:21-CV-00988-AWI-JLT
)	
Plaintiff,)	SCHEDULING ORDER (Fed. R. Civ. P. 16)
)	
v.)	Discovery Deadlines:
)	Initial Disclosures: 11/1/2021
ZIMMER BIOMET HOLDINGS, INC., et al.,)	Non-Expert: 4/20/2022
)	Expert: 8/22/2022
Defendants.)	Mid-Discovery Status Conference:
)	1/28/2022 at 8:30 a.m.

Non-Dispositive Motion Deadlines:
Filing: September 6, 2022
Hearing: October 4, 2022

Dispositive Motion Deadlines:
Filing: October 5, 2022
Hearing: November 21, 2022

Pre-Trial Conference:
January 5, 2023 at 10:00 a.m.
Courtroom 2

Trial: February 21, 2023 at 8:30 a.m.
Courtroom 2
Jury trial: 5 days

I. Information Concerning the Court's Schedule

Out of fairness, the Court believes it is necessary to forewarn litigants that the Fresno Division of the Eastern District of California now has the heaviest District Court Judge caseload in the entire nation. While the Court will use its best efforts to resolve this case and all other civil cases in a timely manner, the parties are advised that not all of the parties' needs and expectations may be met as

1 expeditiously as desired. As multiple trials are set to begin upon the same date, parties may find their
2 case trailing with little notice before the trial begins. The law requires that the Court give any criminal
3 trial priority over civil trials or any other matter. The Court must proceed with a criminal trial even if a
4 civil trial was filed earlier and set for trial first. Continuances of any civil trial under these
5 circumstances will no longer be entertained, absent a specific and stated finding of good cause. All
6 parties should be informed that any civil trial set to begin during the time a criminal trial is proceeding
7 will trail the completion of the criminal trial.

8 The parties are reminded of the availability of a United States Magistrate Judge to conduct all
9 proceedings in this action. A United States Magistrate Judge is available to conduct trials, including
10 entry of final judgment, pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73, and Local
11 Rule 305. The same jury pool is used by both United States Magistrate Judges and United States
12 District Court Judges. Any appeal from a judgment entered by a United States Magistrate Judge is
13 taken directly to the United States Court of Appeal for the Ninth Circuit. The parties are informed that
14 no substantive rulings or decisions will be affected by whether a party chooses to consent.

15 Finally, the Fresno Division of the Eastern District of California, whenever possible, is utilizing
16 United States Article III District Court Judges from throughout the nation as Visiting Judges. Pursuant
17 to the Local Rules, Appendix A, reassignments will be random, and the parties will receive no advance
18 notice before their case is reassigned to an Article III District Court Judge from outside of the Eastern
19 District of California.

20 Therefore, the parties are directed to consider consenting to Magistrate Judge jurisdiction to
21 conduct all further proceedings, including trial. **Within 10 days** of the date of this order, the parties
22 **SHALL** file a consent/decline form (provided by the Court at the inception of this case) indicating
23 whether they will consent to the jurisdiction of the Magistrate Judge.

24 **II. Discovery Plan and Cut-Off Date**

25 The parties are ordered to exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1)
26 on or before **November 1, 2021**.

27 The parties are ordered to complete all discovery pertaining to non-experts on or before **April**
28 **20, 2022**, and all discovery pertaining to experts on or before **August 22, 2022**.

The parties are directed to disclose all expert witnesses¹, in writing, on or before **June 21, 2022**, and to disclose all rebuttal experts on or before **July 20, 2022**. The written designation of retained and non-retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and (C) and shall include all information required thereunder**. Failure to designate experts in compliance with this order may result in the Court excluding the testimony or other evidence offered through such experts that are not disclosed pursuant to this order.

The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to experts and their opinions. Experts must be fully prepared to be examined on all subjects and opinions included in the designation. Failure to comply will result in the imposition of sanctions, which may include striking the expert designation and preclusion of expert testimony.

The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement disclosures and responses to discovery requests will be strictly enforced.

A mid-discovery status conference is scheduled for **January 28, 2022** at 8:30 a.m. before Judge Thurston, located at 510 19th Street, Bakersfield, California. Counsel SHALL file a joint mid-discovery status conference report one week before the conference. Counsel also SHALL lodge the status report via e-mail to JLTorders@caed.uscourts.gov. The joint statement SHALL outline the discovery counsel have completed and that which needs to be completed as well as any impediments to completing the discovery within the deadlines set forth in this order. Counsel SHALL discuss settlement and certify that they have done so. Counsel may appear via teleconference by dialing (888) 557-8511 and entering Access Code 1652736, provided the Magistrate Judge's Courtroom Deputy Clerk receives a written notice of the intent to appear telephonically no later than five court days before the noticed hearing date.

III. Pre-Trial Motion Schedule

All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later

¹ If an expert will offer opinions related to an independent medical or mental health evaluation, the examination SHALL occur sufficiently in advance of the disclosure deadline, so the expert's report fully details the expert's opinions in this regard.

1 than **September 6, 2022²**, and heard on or before **October 4, 2022**. Non-dispositive motions are heard
2 at 9:00 a.m., before Judge Thurston at the United States District Courthouse located at 510 19th Street,
3 Bakersfield, California.

4 **No motion to amend or stipulation to amend the case schedule will be entertained unless**
5 **it is filed at least one week before the first deadline the parties wish to extend.** Likewise, no
6 written discovery motions shall be filed without the prior approval of the assigned Magistrate Judge.
7 A party with a discovery dispute must first confer with the opposing party in a good faith effort to
8 resolve by agreement the issues in dispute. If that good faith effort is unsuccessful, the moving party
9 promptly shall seek a telephonic hearing with all involved parties and the Magistrate Judge. It shall be
10 the obligation of the moving party to arrange and originate the conference call to the court. To
11 schedule this telephonic hearing, the parties are ordered to contact the Courtroom Deputy Clerk, Susan
12 Hall, at (661) 326-6620 or via email at SHall@caed.uscourts.gov. At least three days before the
13 conference, counsel SHALL file informal letter briefs detailing their positions. The briefs may not
14 exceed 7 pages, excluding exhibits. **Counsel must comply with Local Rule 251 with respect to**
15 **discovery disputes or the motion will be denied without prejudice and dropped from the Court's**
16 **calendar.**

17 All dispositive pre-trial motions shall be filed no later than **October 5, 2022**, and heard no later
18 than **November 21, 2022**, in Courtroom 2 at 8:30 a.m. before the Honorable Anthony W. Ishii, United
19 States District Court Judge. In scheduling such motions, **counsel shall comply with Fed. R. Civ. P. 56**
20 **and Local Rules 230 and 260.**

21 **IV. Motions for Summary Judgment or Summary Adjudication**

22 **At least 21 days before** filing a motion for summary judgment or motion for summary
23 adjudication, the parties are **ORDERED** to meet, in person or by telephone, to confer about the issues to
24 be raised in the motion.

25 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a
26 question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole or

27
28 ² Non-dispositive motions related to non-expert discovery SHALL be filed within a reasonable time of
discovery of the dispute, but in no event later than 30 days after the expiration of the non-expert discovery
deadline.

1 in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the issues
2 for review by the court; 5) explore the possibility of settlement before the parties incur the expense of
3 briefing a motion; and 6) to develop a joint statement of undisputed facts.

4 The moving party **SHALL** initiate the meeting and **SHALL** provide a complete, proposed
5 statement of undisputed facts **at least five days before** the conference. The finalized joint statement of
6 undisputed facts **SHALL** include all facts that the parties agree, for purposes of the motion, may be
7 deemed true. In addition to the requirements of Local Rule 260, the moving party shall file the joint
8 statement of undisputed facts.

9 In the notice of motion, the moving party **SHALL** certify that the parties have met and conferred
10 as ordered above or set forth a statement of good cause for the failure to meet and confer. **Failure to**
11 **comply may result in the motion being stricken.**

12 **V. Pre-Trial Conference Date**

13 **January 5, 2023**, at 10:00 a.m. in Courtroom 2 before Judge Ishii.

14 The parties are ordered to file a **Joint Pretrial Statement pursuant to Local Rule 281(a)(2).**
15 The parties are further directed to submit a digital copy of their pretrial statement in Word format,
16 directly to Judge Ishii's chambers, by email at AWIOrders@caed.uscourts.gov.

17 Counsels' attention is directed to **Rules 281 and 282 of the Local Rules** of Practice for the
18 Eastern District of California, as to the obligations of counsel in preparing for the pre-trial conference.
19 The Court will insist upon strict compliance with those rules. In addition to the matters set forth in the
20 Local Rules the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the
21 Court to explain the nature of the case to the jury during voir dire.

22 **VI. Trial Date**

23 **February 21, 2023**, at 8:30 a.m. in Courtroom 2 before the Honorable Anthony W. Ishii,
24 United States District Court Judge.

25 A. This is a jury trial.

26 B. Counsels' Estimate of Trial Time: 5 days.

27 C. Counsels' attention is directed to Local Rules of Practice for the Eastern District of
28 California, Rule 285.

1 **VII. Settlement Conference**

2 The parties report they intend to engage in private mediation. If the parties agree a settlement
3 conference is likely to be productive, they may jointly request the Court set a settlement conference.

4 **VIII. Requests for Bifurcation, Appointment of Special Master, or other**
5 **Techniques to Shorten Trial**

6 Not applicable.

7 **IX. Related Matters Pending**

8 There are no pending related matters.

9 **X. Compliance with Federal Procedure**

10 All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure
11 and the Local Rules of Practice of the Eastern District of California, and to keep abreast of any
12 amendments thereto. The Court must insist upon compliance with these Rules if it is to efficiently
13 handle its increasing case load, and sanctions will be imposed for failure to follow both the Federal
14 Rules of Civil Procedure and the Local Rules of Practice for the Eastern District of California.

15 **XI. Effect of this Order**

16 The foregoing order represents the best estimate of the court and counsel as to the agenda most
17 suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If the
18 parties determine at any time that the schedule outlined in this order cannot be met, counsel are ordered
19 to notify the court immediately of that fact so that adjustments may be made, either by stipulation or by
20 subsequent status conference.

21 **The dates set in this order are firm and will not be modified absent a showing of good**
22 **cause even if the request to modify is made by stipulation. Stipulations extending the deadlines**
23 **contained herein will not be considered unless they are accompanied by affidavits or declarations,**
24 **and where appropriate attached exhibits, which establish good cause for granting the relief**
25 **requested.** Failure to comply with this order may result in the imposition of sanctions.

26 IT IS SO ORDERED.

27 Dated: September 20, 2021

/s/ Jennifer L. Thurston
CHIEF UNITED STATES MAGISTRATE JUDGE